IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11119 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

INDIA MEDITRONIC PVT LTD

Versus

BARODA MUNICIPAL CORP

Appearance:

1. Special Civil Application No. 11119 of 2001

MR NK MAJMUDAR for Petitioner No. 1

MR PRANAV G DESAI for Respondents No. 1-3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 11/03/2002

ORAL JUDGEMENT

Rule. Mr Pranav G Desai learned counsel for the respondents waives service of Rule. In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. This petition under Article 226 of the Constitution challenges the decision of the Baroda Municipal Corporation refusing to grant concessional rate of octroi duty to the petitioner industry under Rule 28 of the Baroda Municipal Corporation Octroi Rules, 1993.

3. It is the petitioner's case that the petitioner India Meditronic Pvt. Ltd. is doing job work for its parent company in USA - Meditronic USA. It is stated that the said American Company sends components to the petitioner in Baroda and the petitioner merely assembles those components into a life saving device "Stent Grafts" which is a life saving important vital device having connection with the open heart surgery. Since the petitioner does not purchase the components from the American company but merely gets them for converting the components into a final product known as "Stent Grafts", the petitioner invoked the provisions of Rule 28 of the Baroda Municipal Corporation Octroi Rules as published in the Government Notification dated 25-6-1993. As required by the said Rules, the petitioner agreed to pay octroi duty on 25% of the cost of the components imported from Meditronic USA for the limited purpose of assembling them into "Stent Grafts". The Corporation granted tentative adhoc permission by letter dated 11-1-2000 for granting the benefit to the petitioner for the period of six months. Thereafter by demand notice dated 9-1-2001, the Assistant Municipal Commissioner (Revenue) of the respondent - Corporation informed the petitioner that the petitioner's application for exemption of octroi under Rule 28 of the Octroi Rules was not acceptable and, therefore, the petitioner shall have to pay remaining 75% of the octroi duty i.e. Rs.1,78,005/- after adjusting 25% paid earlier i.e. Rs.59,335/-. Against the said demand notice dated 9-1-2001 (Annexure B), the petitioner submitted a representation dated 5-2-2001 (Annexure C). The Deputy Municipal Commissioner sent his reply dated 26-7-2001 (Annexure D) that the decision dated 9-1-2001 was taken after considering the process involved and the opinion of the expert. The reply further stated that the adhoc permission granted earlier for octroi exemption was not consistent with the provisions of Rule 28 and therefore, the adhoc permission granted earlier was cancelled and the outstanding amount of the octroi duty was required to be paid immediately. It is the aforesaid demand notice dated 9-1-2001 and the communication dated 26-7-2001 from the respondent Corporation which are under challenge in this petition.

4. Mr NK Majmudar learned counsel for the petitioner

has submitted that the petitioner's case is clearly covered by Rule 28 which provides for exemption from octroi duty where the person importing the components merely does job work for the benefit of the person who sends the materials to the petitioner. The petitioner does not purchase the components from Meditronic USA but merely gets the components and after converting them into "Stent Grafts", sends the final products back to Meditronic USA and, therefore, the petitioner's case clearly falls within clause (12) of Rule 28. It is further submitted that even the Customs and Excise Department of Government of India has treated this process as merely a job work process and not manufacturing activity for the purpose of excise duty and customs duty and, therefore, also the respondent - Corporation must take a decision consistent with the decision of Government of India.

5. On the other hand, Mr Pranav G Desai, learned counsel for the respondent - Corporation has submitted that the final product which the petitioner makes is "Stent Grafts" which is entirely different from the components being imported by the petitioner from USA and, therefore, the components imported by the petitioner from USA are consumed for the purpose of making "Stent Grafts" within the limits of the Municipal corporation and, therefore, it is liable to make payment of octroi duty. The petitioner is not merely repairing or processing the imported products but manufactures an altogether new product and, therefore, it cannot be said to be repairing, processing or job work. The learned counsel has also referred to the averments made in the reply affidavit dated 11-2-2002 filed by the Octroi Superintendent in the respondent - Corporation. Mr Desai further states that the petitioner is manufacturing from raw material the final product in cylindrical form as per the measurement of blood vessels i.e. different measurements for different blood vessels and carrying on weaving operations. Thus, a new product is brought into existence by the petitioner from the raw materials received and then the new product is sold. Therefore, the Corporation is justified in recovering full octroi duty.

6. Having heard the learned counsel for the parties, it appears to the Court that there does not appear to be any controversy about the fact that the petitioner imports the components from Meditronic USA for the purpose of making "Stent Grafts" and sends the said final product back to Meditronic USA. There is also no dispute about the fact that the petitioner does not purchase the

components from Meditronic USA but the said Company sends the components to the petitioner for job work purpose. The only dispute is whether the activity which the petitioner does falls within the purview of Rule 28 of the Octroi Rules of the respondent - Corporation.

7. Rule 28 contains 12 clauses for dealing with the claim for concessional rate of octroi duty (25% of the normal duty rate) on the ground that the importer is only repairing, processing, testing or doing job work in respect of the materials being imported. Clause 11 of Rule 28 specifies processing and job work activities which are entitled to the benefit of this octroi exemption; various activities are mentioned such as dyeing, bleaching, electroplating, heat treatment and such other processes for which the Commissioner grants approval from time to time. It, thus appears that it is the Commissioner who is required to take the decision whether the activity is eligible for concession under Rule 28 of the Octroi Rules.

In the instant case, however, the Municipal Commissioner has not considered the matter under Clause 11 of Rule 28. Moreover, it also appears that before taking the impugned decision dated 9-1-2001, the respondent authorities had taken into consideration the opinion of an expert. It is not the case of the respondents that the opinion of the expert was disclosed to the petitioner or that he was given a copy thereof and an opportunity to meet with the same. It is, therefore, clear that there was a breach of the principles of natural justice.

8. In view of the aforesaid discussion, the petition is allowed. The impugned demand notice dated 9-1-2001 (Annexure B) and the communication dated 26-7-2001 (Annexure D) are hereby quashed and set aside as illegal with liberty to the Municipal Commissioner, Vadodara Municipal Corporation to supply to the petitioner a copy of the expert's opinion which was relied upon by the Corporation authorities and thereafter to give the petitioner an opportunity of producing its own material including the opinion of an expert, if any, which the petitioner may desire to produce. The Municipal Commissioner himself/herself shall give the petitioner an opportunity of being heard and thereafter take the decision whether the petitioner should be granted the benefit of concessional rate of duty under Rule 28. The petitioner shall extend full cooperation for expeditious completion of such hearing.

9. The petition is accordingly disposed of in the terms aforesaid. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah,J)

zgs/-